REMARKS

In response to the Office Action dated March 11, 2009 (hereinafter "the Office Action"), claims 1-41 are pending. Claim 1 has been amended. Reexamination and reconsideration of the present application are respectfully requested.

Claim 1 was objected to by the Examiner because of informalities. Claim 1 has been amended to address the Examiner's objection.

Claims 22 and 36 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The Examiner stated that "[t]he claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention." (*Office Action, p. 2.*) The Examiner further stated that the terms "program code storage device," and "machine-readable storage medium" (hereinafter "the terms at issue") do not appear in the specification. *Id.* Applicant respectfully submits that the subject matter encompassed by terms at issue as recited in claims 22 and 36 is adequately described in the specification as to enable one skilled in the art to make and use the invention.

MPEP § 2164.08 recites:

> All that is necessary is that one skilled in the art be able to practice the claimed invention, given the level of knowledge and skill in the art. Further the scope of enablement must only bear a "reasonable correlation" to the scope of the claims.

Applicant respectfully submits that one skilled in the art would be able to practice the claimed invention because the term "program code storage device" would be easily understood by one skilled in the art. Furthermore, the scope of the enablement described in the specification of the present application bears more than only a "reasonable correlation" to a "program code storage device." Likewise, one skilled in the art would be able to practice the claimed invention because the term "machine-readable storage medium" is easily understood by one skilled in the

art, and the scope of the enablement described in the specification of the present invention bears more than only a "reasonable correlation" to a "machine-readable storage medium." Accordingly, Applicant respectfully submits that the specification teaches those skilled in the art how to make and use the full scope of the claimed invention without undue experimentation. *See generally* MPEP § 2164. Applicant respectfully requests that the 35 U.S.C. 112, first paragraph rejection be withdrawn.

Claims 13 and 24 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner stated that "[i]t is not understood as to what is meant by 'using various content recognition algorithms' as definitions or examples of the content recognition algorithms are not explained in the specification." (*Office Action, p. 3.*) Applicant respectfully directs the Examiner's attention to page 3 of the specification for examples of types of content associated with the present invention, e.g., video, audio, software. Various algorithms used to recognize content are well known in the art. Accordingly, Applicant respectfully submits that claims 13 and 24 are not indefinite and distinctly claims the subject matter which Applicant regards as the invention, and Applicant respectfully requests that the 35 U.S.C. 112, second paragraph rejection be withdrawn.

Claims 1-2, 4-10, 12-16, 21-31, and 34-37 were rejected under 35 U.S.C. 102(e) as being anticipated by Logan et al., U.S. Pub. No. 2003/0093790.

Claims 3, 11, and 38 were rejected under 35 U.S.C. 103(a) as being unpatentable over Logan, in view of Novak et al., U.S. Pat. No. 7,032,177.

Claims 17, 19-20, 32, and 39-41 were rejected under 35 U.S.C. 103(a) as being unpatentable over Logan, in view of Ellis et al., U.S. Pat. No. 5,436,653.

Claims 18 and 33 were rejected under 35 U.S.C. 103(a) as being unpatentable over Logan, in view of Ellis, and further in view of well-known prior art, to which the Examiner took Official Notice "that it was old and well known in the art to include wherein a video frame is represented by a two-dimensional fast [F]ourier transform (FFT), and an audio frame is represented by a one-dimensional fast [F]ourier transform (FFT)." (*Office Action, p. 16.*)

Applicant respectfully traverses these rejections for the reasons set-forth below.

35 U.S.C. 102(e) (Logan)

The Examiner cited Logan, U.S. Pub. No. 2003/0093790 ("the '790 publication") under 35 U.S.C. 102(e) as anticipating claims 1-2, 4-10, 12-16, 21-31, and 34-37.

35 U.S.C. 102(e) recites:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in - (1) **an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent** or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language (emphasis added).

Assuming, *arguendo*, that Logan discloses the subject matter stated by the Examiner, which Applicant does not concede, Logan still does not anticipate the present invention because Logan was filed on June 8, 2002, which is four (4) months after the application for the present invention was filed (February 8, 2002). Although Logan is a continuation-in-part of an application filed on March 28, 2000 (U.S. patent serial No. 09/536,969, now U.S. Pat. No. 6,931,451 ("the '451 patent")), the '451 patent does not disclose, teach, or suggest the disclosure from the '790 publication relied upon by the Examiner. Accordingly, Applicant respectfully submits that the Logan '790 publication does not anticipate claims 1-2, 4-10, 12-16, 21-31, and 34-37.

35 U.S.C. 103(a) (Logan, Novak)

The Examiner cited Novak in an attempt to overcome the deficiencies of Logan with respect to claims 3, 11, and 38 of the present invention. As discussed above, Logan does not qualify as a proper 35 U.S.C. 102(e) reference because the Logan application was not filed in the United States before the invention of the present Applicant. Assuming, *arguendo*, that Novak discloses the subject matter stated by the Examiner, which Applicant does not concede, Novak still fails to anticipate each and every element recited in claims 3, 11, and 28. Accordingly, Applicant respectfully submits that claims 3, 11, and 38 are allowable over the cited reference.

35 U.S.C. 103(a) (Logan, Ellis)

The Examiner cited Ellis in an attempt to overcome the deficiencies of Logan with respect to claims 17, 19-20, 32, and 39-41 of the present invention. As discussed above, Logan does not qualify as a proper 35 U.S.C. 102(e) reference because the Logan application was not filed in the United States before the invention of the present Applicant. Assuming, *arguendo*, that Ellis discloses the subject matter stated by the Examiner, which Applicant does not concede, Ellis still fails to anticipate each and every element recited in claims 17, 19-20, 32, and 39-41. Accordingly, Applicant respectfully submits that claims 17, 19-20, 32, and 39-41 allowable over the cited reference.

35 U.S.C. 103(a) (Logan, Ellis, Examiner's "Official Notice")

The Examiner cited Ellis and took Official Notice in an attempt to overcome the deficiencies of Logan with respect to claims 18 and 33 of the present invention. As discussed above, Logan does not qualify as a proper 35 U.S.C. 102(e) reference because the Logan application was not filed in the United States before the invention of the present Applicant. Assuming, *arguendo*, that Ellis discloses the subject matter stated by the Examiner, which

Applicant does not concede, Ellis still fails to anticipate each and every element recited in claims 18 and 33. Furthermore, assuming, *arguendo*, that the Examiner's Official Notice "that it was old and well known in the art to include wherein a video frame is represented by a two-dimensional fast [F]ourier transform (FFT), and an audio frame is represented by a one-dimensional fast [F]ourier transform (FFT)," which Applicant does not concede, the Examiner's Official Notice does not compensate for the deficiencies of Ellis. Accordingly, Applicant respectfully submits that claims 18 and 33 are allowable over the references of record.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 488-7100 to discuss the steps necessary for placing the application in condition for allowance should the Examiner believe that such a telephone conference call would advance prosecution of the application.

Respectfully submitted,
PILLSBURY WINTHROP SHAW PITTMAN LLP

Date: June 11, 2009

By: _____
Roger R. Wise
Registration No. 31,204
Attorney for Applicant

725 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406
Telephone: (213) 488-7100
Facsimile: (213) 629-1033